



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0911]

RIN 1625-AA09

Drawbridge Operation Regulation; Thea Foss Waterway

Previously Known as City Waterway, Tacoma, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Murray Morgan Bridge, also known as the South 11th Street Bridge, across Thea Foss Waterway, mile 0.6, previously known as City Waterway, at Tacoma, WA. This proposed rule would allow more efficient staffing of the bridge operating crew by requiring advance notification for bridge openings during designated hours. This proposed rule will also remove existing authorized closure periods for the bridge to better reflect present day transportation needs. Lastly, this proposed change will update contact information for requesting emergency bridge openings.

DATES: Comments and related material must reach the Coast Guard on or before [Insert date 45 days after date of

publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2012-0911 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail the Bridge Administrator, Coast Guard Thirteenth District; telephone 206-220-7282 e-mail randall.d.overton@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0911), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as

having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rules" and insert "USCG-2012-0911" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the

"Keyword" box insert "USCG-2012-0911" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**, using one of the four methods specified under ADDRESSES. Please explain why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will

hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

Presently the bridge operates under 33 CFR 117.1061 which requires a two hour notice for an opening and allows the bridge to not open during morning and afternoon rush hours. This proposed rule will eliminate the authorized closure during the morning and afternoon rush hour and it will add an additional advance notification for bridge openings between 10 p.m. and 8 a.m. Waterway users and Marine Facilities in the vicinity of the bridge have received direct email correspondence to inform them of the proposed rule. Additionally the Coast Guard has issued a temporary deviation to test the proposed rule and to gather comments or concerns about the proposed rule. The temporary test deviation may be found online at <http://www.regulations.gov>, under docket number USCG-2012-0911.

C. Basis and Purpose

The Coast Guard, at the request of the City of Tacoma, proposes to change the regulation which governs the operating schedule of the Murray Morgan Bridge. This proposed change will allow the City of Tacoma to staff the bridge operating crew more efficiently and will better accommodated present day transportation needs. This

proposed change will also update contact information needed to request emergency openings of the bridge.

D. Discussion of Proposed Rule

Three amendments to the existing operating regulation are being proposed for the Murray Morgan Bridge. The first proposed amendment would require that for bridge openings between 10 p.m. and 8 a.m., notification be made no later than 8 p.m. prior to the desired opening. This differs from the existing regulation in that presently the bridge is required to open at all times (except during authorized closure periods) provided two hours advance notice is given. This amendment for notification by 8 p.m. for openings between 10 p.m. and 8 a.m. is being proposed because openings between 10 p.m. and 8 a.m. are extremely rare. Over an 18 month period there were only 6 bridge openings requested between 10 p.m. and 8 a.m. which averages one bridge opening request per three month period. One of the unique features of the Murray Morgan Bridge is its height above the waterway providing 60 feet of clearance at mean high water (MHW) in the closed position. Because of this vertical clearance the overwhelming majority of vessels which transit this waterway do not require a bridge opening. The majority of bridge openings are for locally moored and operated recreational sailboats with mast heights over 60 feet. Almost all of these vessels are moored at marinas in

very close proximity of the bridge.

The second amendment proposed to the regulation is to remove the authorized morning and afternoon bridge closure periods. The current regulation states that the draw need not be opened from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m. Monday through Friday, for vessels of less than 1,000 gross tons. This proposed change would require the draw to open at all times with proper advance notification. The morning and afternoon authorized closures of the bridge outlined in the existing regulation were put into place when the bridge was part of SR 509, a continuous route from Northeast Tacoma to downtown, and traffic volumes were approximately 15,000 vehicles per day. In 1997 a new SR 509 was constructed approximately 0.7 miles south of the bridge and is now used as the main traffic corridor. After completion of the new SR 509, the Murray Morgan Bridge connection between Northeast Tacoma and downtown was severed due to roadway reconfiguration, resulting in traffic volumes dropping dramatically; therefore, the bridge no longer conveys high volumes of traffic during the morning and afternoon rush hours.

The third proposed amendment to the existing regulation changes the contact information for emergency bridge openings. The existing regulation states "In emergencies, openings shall be made as soon as possible upon notification

to the Washington State Department of Transportation." The proposed change would state notification for emergency opening would be made to the City of Tacoma. The reason for this change is because Washington State turned over ownership and responsibility of the bridge to the City of Tacoma on January 6, 1998. To help evaluate these proposed changes the Coast Guard has issued a Temporary Deviation from the operating schedule that governs the Murray Morgan Bridge. The Temporary Deviation mirrors the regulation changes proposed in this document. Comments may be submitted for the Temporary Deviation following the same procedure as outlined in the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section of this notice.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and

benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this proposed rule to be insignificant and therefore a full Regulatory Evaluation is unnecessary. Very few vessels will be impacted because all requested bridge openings will be granted with advance notification.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This action will not have a significant economic impact on a substantial number of small entities because it does not authorize closure periods for the bridge. Additionally, because the bridge provides 60 feet of vertical clearance when it is in the closed position only a very few numbers of vessels using the waterway require a bridge opening to transit the area. The vessels that require a bridge opening are primarily privately owned tall mast sailboats moored in close proximity of the bridge. Vessels which do require an opening will be granted an opening without delay when

appropriate notification is given.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive

Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or

procedures for drawbridges. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Amend §117.1061 to revise paragraph (b) to read as follows:

§117.1061 Tacoma Harbor.

* * * * *

(b) The draw of the Murray Morgan Bridge, also known as the South 11th Street Bridge, across Thea Foss Waterway, previously known as City Waterway, mile 0.6, at Tacoma,

shall open on signal if at least two hours notice is given. However, to obtain a bridge opening between 10 pm and 8 am, notification must be made to the City of Tacoma by 8 pm. In emergencies, openings shall be made as soon as possible upon notification to the City of Tacoma.

Dated: November 2, 2012__K. A. TAYLOR
Rear Admiral, U. S. Coast Guard
Commander, Thirteenth Coast Guard
District

[FR Doc. 2012-28130 Filed 11/19/2012 at 8:45 am; Publication
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